

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

August 5, 2014

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Bob Cronin
Andy Hegedus
Edgar Johnson
Alan Silverman

Commissioners Absent: Patricia Brill

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Supervisor

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE JULY 1, 2014 PLANNING COMMISSION MEETING.

The minutes of the July 1, 2014 Planning Commission were approved as submitted.

Mr. Bowman: Before we open the second agenda item, since we have some 15 written requests to speak on this item on the agenda, the Chair is going to limit comments to three minutes per person. The Chair is also going to exercise its right, if you are consistently repetitive, to thank you for your comment and ask you to yield to the next person, so we don't sit here hearing the same thing over and over and over again. Also, if anybody happens to be here for Item #3 on the agenda which was a review and consideration of an amendment to the Zoning Code, that item has been withdrawn.

2. REVIEW AND CONSIDERATION OF THE MAJOR SUBDIVISION OF THE PROPERTY LOCATED AT 305 CAPITOL TRAIL. APPROVAL IS REQUESTED IN ORDER TO EXTINGUISH THE LOT LINE BETWEEN TWO EXISTING PARCELS AT THE SITE AND THEN SUBDIVIDE TO CREATE FOUR (4) SINGLE FAMILY RS ZONED LOTS, ONE OF WHICH WILL CONTAIN THE EXISTING HOME FRONTING ON CAPITOL TRAIL.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

"On April 3, 2014, the City of Newark received an application from Assadollah Pirestani for the major subdivision of the property located at 305 Capitol Trail. The applicants are requesting development approval in order to extinguish the lot line between two existing parcels at the site and then subdivide them to create three new single family RS zoned lots. The applicants propose the existing home fronting on Capitol Trail to remain. The resulting major subdivision, if approved, will result in four (4) RS zoned, single family lots.

The properties will be accessed through a 30 foot wide private right-of-way with a 16 foot wide private driveway to serve all four lots. This private right-of-way constitutes

a new street, even though it is private, and therefore, the four lot subdivision is considered a major, not a minor, one.

The Planning and Development Department report on the 305 Capitol Trail project follows:

Description and Related Data

1. Location:

The north side of Capitol Trail approximately 252 feet west of the intersection of Trout Stream Drive and Capitol Trail.

2. Size

1.774 +/- acres.

3. Existing Land Use:

Currently, the site has one single family home on it fronting on Capitol Trail. This home is proposed to remain. The remainder of the site is private open space.

4. Physical Condition of the Site:

The 305 Capitol Trail property contains one single family home fronting on Capitol Trail. The single family home is accessed by a driveway along the western portion of the parcel which leads to an asphalt parking area in the rear. The home also has a stockade privacy fence protecting a backyard area with play equipment. The remainder of the site is open space and slopes gently, but steadily, to the north. Several large trees are located along the western property line and in the rear of the site towards the White Clay Creek.

In terms of topography, as noted above, the 305 Capitol Trail site slopes in general to the north, from Capitol Trail towards the White Clay Creek. Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service and the applicant's plan, the site consists of Urban Land (Up) and Elinsboro-Delanco Urban Land Complex (ErB). The Natural Resources Conservation Service does not indicate limitations for the proposed development resulting from soils.

5. Planning and Zoning:

The 305 Capitol Trail property is currently zoned RS. RS is a residential single family district zoning that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.

- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Based on recent Council discussions, a summary of RS area requirements may be found below:

Area regulations.

- (1) *Minimum lot area.* RS—9,000 square feet.
- (2) *Maximum lot coverage.* The maximum lot coverage for any building, exclusive of accessory buildings, shall be 20%, and the total maximum lot coverage, including any building, accessory buildings, and manmade improvements on the ground surface which are more impervious than the natural surface with some exceptions shall be 44%.
- (3) *Minimum lot width.* RS—75 feet.
- (4) *Height of buildings.* Three stories or 35 feet.
- (5) *Building setback lines.* RS—25 feet.
- (6) *Rear yards. Interior lots:* RS—30 feet.
- (7) *Side Yards: Interior lots:* RS—10 feet, with a minimum aggregate width of the two side yards of 25 ft.

Regarding RS zoning area requirements, the 305 Capitol Trail plan meets all applicable Zoning Code requirements.

Regarding nearby properties, the 305 Capitol Trail property is adjacent to the east and west to RS zoned residential properties. RS zoned single family dwellings also exist across Capital Trail from the site. Vacant land to the northwest of the property is zoned RS and OFD as White Clay Creek floodplain is also adjacent at the northern end of the property proposed for development. Finally, the rear of the property is adjacent on the east to several rear yards of the RS zoned Lauras Glen subdivision.

Regarding comprehensive planning, the City's Comprehensive Development Plan IV calls for "single family residential (low density)" land uses at the 305 Capitol Trail site. The Plan defines "single family residential (low density)" as "areas

designated for dwellings occupied by one family, primarily single family detached with overall densities of 1-3 dwelling units per acre.” The 305 Capitol Trail development plan calls for 2.25 dwelling units per acre.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. For architectural character, normally applicants submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features, and existing utility lines. In this case, the applicant has not developed specific architectural plans and elevations for the new lots because he intends to sell them as buildable lots, assuming final approval. Regardless, the community is entitled to know what the proposed homes may look like in terms of architectural style and materials. The developer, therefore, has provided photographs of typical architectural styles of homes which may be constructed there. In addition, a stipulation to insure quality, size and value of homes to be built there should be developed and memorialized in the subdivision agreement, again assuming the development is approved. More discussion concerning this matter is contained in the Subdivision Advisory Committee comments of this report.

If the Construction Improvements Plan (CIP), which follows subdivision approval and is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the CIP is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the 305 Capitol Trail major subdivision plan calls for maintaining the existing single family home fronting on Capitol Trail, and subdividing the remainder into three new single family lots. This subdivision will result in four (4) RS zoned single family lots at the site, ranging in size from .21 to .5 acres each. A new private right-of-way will be created to serve all four lots. The existing driveway to the parcel on Capitol Trail will be removed.

Fiscal Impact

The Planning and Development Department has evaluated the impact of the 305 Capitol Trail project on Newark’s municipal finances. The estimates are based on the Department’s Fiscal Impact Model. The Model projects the 305 Capitol Trail development plan’s fiscal impact; that is, the total annual municipal reviews less the cost of municipal services provided. Based on the Model’s estimate, we project the annual 305 Capitol Trail net revenue to be as follows:

First Year:	\$6,331
Second Year:	\$6,048
Third and Thereafter:	\$ 448

The analysis assumes a two year build out and assigns the real estate transfer tax to the period.

Traffic

As previously noted, because the 305 Capitol Trail development proposal involves a new private driveway for access, it is considered a major subdivision on the State owned and maintain roadway. The plan was, therefore, submitted to DelDOT for review and

comment. While DelDOT did provide entrance plan submittal comments for the applicant's engineer, they did not provide specific traffic comments because they do not believe that the additional building lots will generate enough traffic to impact the area.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee, consisting of the Management, Planning and Operating Departments, has reviewed the 305 Capitol Trail major subdivision and has the comments listed below.

Electric

1. Electric service will be provided from Capitol Trail.
2. The developer must pay \$13,000 towards the cost of electric facilities and meters. In addition, the developer is responsible for digging and backfilling all high voltage and low voltage trenches. The price quoted is subject to a CPI increase one year after Council approval of the development.
3. The developer must agree to pay up to \$4,000 for a radio if the new houses interfere with the City's smart meter system (see note #33 on the plan).

Parks and Recreation

1. The landscape plan submitted is acceptable. The Department will have detailed comments during the Construction Improvement Plan, should the project be approved.

Police

1. The name of the private drive shown on the plan (Pond Lane) has been rejected for 911 review. A new, revised name of "Clara Drive" has been submitted for consideration and was approved. The corrected street name must be on the development plan reviewed by Council. In addition, address numbers will be required on the CIP submittal.

Public Works and Water Resources

Water and Wastewater

1. Individual meters will be provided for each dwelling unit at the developer's expense (see note #22). The City will determine the size of the meters in coordination with the developer.
2. The developer shall pay Sewage Treatment Plant (STP) fee prior to receiving a Certificate of Occupancy (CO) for a unit. (See note #23).
3. A 6" lateral is required for the sanitary sewer system to service the development. The existing 4" lateral will need to be replaced.

Public Works

1. The eastern right-of-way line does not appear parallel to the western property line. There appears to be a change of direction without a monument/marker.
2. Infiltration test results for the trench located in the private right-of-way must be provided before Council review of the development to insure that adequate space and adequate pre-treatment exist.
3. Trash removal will be by private hauler (see note #19).
4. The sidewalk along Capitol Trail must be pulled back to provide a 4' grass strip between the back of the curb and the sidewalk.

5. No conditional or regular Certificates of Occupancy will be issued prior to an approved DelDOT ADA inspection.

Planning and Development

Planning

1. The Department notes that the proposed development meets the City's Comprehensive Development Plan IV which calls for single family low density residential uses at the site.
2. The Department notes that the RS zoning district limits occupancy in single family homes to no more than 3 unrelated individuals. Further, the student home ordinance will apply. In addition to these occupancy restrictions, the Commission may consider more restrictive occupancy limits to discourage these units, when built, from turning into rentals by requesting that the developer voluntarily deed restrict the property to allow no more than two unrelated tenants as a condition of approval. The Commission may wish to discuss potential occupancy limitations with the developer at the meeting.
3. The owner/developer listed on the plan should be revised to reflect Mr. Pirestani name only.
4. Regarding architectural design, the Department suggests that the owner deed restrict the properties to require that no dwelling, garage or other structure be erected or maintained other than a one (1) single family dwelling with not less than 2500 square feet of total floor area, a single story garage and incidental accessory buildings; and further, that the facades of such structures be comprised of brick, stone, siding and stucco, or some combination thereof to be consistent with homes in the surrounding area. The Commission may also wish to discuss these conditions with the applicants at this meeting.

Code Enforcement

1. A turnaround is required at the end of the street for fire truck maneuverability.
2. All buildings shall be designed and constructed in accordance with the International Building Code, as amended, in effect at the time of submittal.
3. One fire hydrant shall be required in front of or between lots 2 and 3.
4. As a condition of the building permit, the applicant must provide documentation of DelDOT Entrance Permit application.

Recommendation

Because the 305 Capitol Trail major subdivision conforms to the land use recommendations in the Comprehensive Development Plan IV, because the proposal meets or can meet all applicable Code requirements, because the proposed use does not conflict with the development pattern in the nearby area, and because, with the Departmental conditions, the proposal should not have a negative impact on nearby and adjacent properties, the Planning and Development Department suggests that, **the Planning Commission recommend that City Council approve the 305 Capitol Trail major subdivision, as shown on the Landmark Science and Engineering plan, dated March 12, 2014, with revisions through May 5, 2014, with the Subdivision Advisory Committee conditions."**

Ms. Feeney Roser: That concludes the summary of the report. I will be happy to answer any questions the Commissioners may have for me.

Mr. Bowman: Are there any initial questions for the Planning and Development Department from the Commissioners?

Mr. Alan Silverman: In the letter that is part of the packet that was prepared for this exhibit in preparation for this meeting, there is a reference to the City wanting a 4 ft. grass parking strip between the existing curb and moving the existing sidewalk back beyond that 4 ft. strip. I believe in this circumstance that it is impractical and may be a public safety issue with respect to suddenly offsetting a sidewalk adjacent to a curb or (inaudible) someone's property and then having it come back out again adjacent to the curb. I will recommend that that not be included in our recommendation. It just doesn't work. It works in a larger subdivision.

Ms. Feeney Roser: You can do that when it gets to the recommendation stage. You can take out any of the conditions that you don't think are appropriate.

Mr. Silverman: Okay, and there is no practical way of matching of sidewalks if you take the Code literally.

Mr. Bowman: Does anyone else on the Commission have any preliminary questions for the Planning and Development Department? If not, the applicant is here. Please come to the microphone and state your name and address.

[Secretary's Note: The applicant, the Commissioners and the public refer to visuals brought to the meeting by the applicant for their presentation to the Planning Commission].

Ms. Lisa Goodman: Of Young, Conaway, Stargatt & Taylor here on behalf of Mr. Pirestani. With me here this evening is Mr. Joe Charma who is the project engineer and Mr. Pirestani and his wife.

The Planning and Development Director did a great job of summarizing her report, and I am not going to go over that information again. I am going to briefly go over the handout that we provided to the members of the Commission and talk in a little bit broader terms about this project.

This project, as you know, is at 305 Capitol Trail and it is next to the property of Lauras Glen. It comprises two parcels, and you can see on the second page that I handed you, the two parcels in red. One of them fronts Old Capitol Trail and that is this parcel here. The second parcel is to the rear which is proposed to be divided into three parcels. The third item you have in your handout is exactly what the audience can see here. This is the site plan that has been colored just to make it a little bit easier to see. They are a little bit hard to read for folks that don't do it every day in black and white.

So, what you see here is Old Capitol Trail along the left. This is the existing house that will remain and the existing lot. This is proposed to be Clara Drive coming in, 30 ft. wide right-of-way with a 16 ft. paving to serve these four houses, currently one house. As Ms. Feeney Roser said, this is zoned RS and essentially everything around it is zoned RS. The good news for the Planning Commission is that is a decision that has already been made. Made by Council that this area is RS, which is single family. So, what the Planning Commission is asked to look at, essentially, is, does this plan conform to the Zoning Code, to the Comprehensive Plan and are the conditions with which you will send it to Council reasonable? This is what we refer to in the law as a by-right plan. It meets the requirements of the zoning district. It meets the dimensional requirements of the Zoning Code. It meets the Comprehensive Development Plan, which calls for low density single residential uses. Not only does it meet it, but the Comp Plan calls for 1 – 3 and this property, if approved, will be at 2.25. So, it is dead in the center.

This development is actually very, very similar to Lauras Glen, which is next to it. Lauras Glen was also a by-right plan and there was a lot of neighborhood concern about it because it was a change. But, it was a by-right plan and it was approved and it has now been built and I think that this is the same path that this project will take. Again, it is zoned RS and it meets all of the requirements of RS.

If you turn another page on the handout, we have provided you with a black and white copy of the plan. I know that you all have the larger copies which are much easier to read. And, then we have provided the three submissions that the Planning and Development

Director spoke about, which are the sample homes of the type that may be built here. It is really impossible to show specific models for lots that are going to be sold either to a builder to build or to individuals who might then hire an architect to build a house. But, what we can say about this, however, is the two conditions that have been proposed by Planning – and these are on the second to last page of the Planning Department’s report on page 6, namely that the Commission consider restricting these properties to no more than two unrelated tenants is acceptable to Mr. Pirestani and, additionally, the conditions relating to the architectural design that the property be deed restricted, essentially, to require that a dwelling be no less than 2,500 sq. ft. of total floor area, single story garage, additional accessory buildings and that the facades be comprised of brick, stone, siding and stucco or some combination thereof to be consistent with the homes in the area. Mr. Pirestani is also happy to have that condition included by this Commission and eventually by Council. Those seem reasonable conditions and when one has a plan like this that meets all the Zoning Code requirements, the Planning Commission and then Council may place reasonable conditions on it. Reasonable conditions have been held by courts, not to be, two houses because four meets the Zoning Code, but certainly these two conditions we believe fall under the reasonable condition standard and we are happy to agree to them.

I would like to provide the Commission with one other handout, if I might. Because this property does back to a property which contains floodplain, we wanted the Commission to have, in front of them, an exhibit that was prepared of the FEMA maps that were prepared for the regularly scheduled meeting, which has already been held with DNREC and Public Works of the City that shows exactly where the 500 Year, the 100 Year floodway is. And, as you can see, it is not anywhere near being on this property. It is considerably to the rear of this property and of the Lauras Glen properties.

That is what we have. I really don’t want to take a lot of the Commission’s time because this is a fairly straight forward plan and there are a lot of folks that want to speak. We would just ask that we be permitted after folks have had public comment to address anything that comes up. We are happy to answer any questions.

Mr. Bowman: Are there any questions from the Commissioners for the applicant?

Mr. Andy Hegedus: Note #4 talks about the stormwater management drainage erosion, sediment in compliance with the regulations in Newark City Code. We are putting a lot of new impervious material that is going to create more water running downhill towards White Clay Creek and I am wondering if you can comment on the thoughts around how you might manage all that.

Ms. Goodman: We will bring the project engineer up to address that.

Mr. Joe Charma: Mr. Hegedus, this project has been evaluated under the new Stormwater Regulations, which all of you know are very stringent and there is a document that has been prepared and submitted to DNREC and to the Public Works Department and the bottom line, if you quote this document, is the first choice of stormwater management is recharge and that is what we plan on doing with this project. We intend on capturing the road runoff – recharging it, capturing rooftop runoff – recharging it. So, the hope is zero runoff, no more than comes off the site as a grass surface. That is the bottom line.

Mr. Hegedus: When I was looking at the plan, Mr. Charma, I didn’t see any places for that – it could be me not seeing it because there are a lot more lines on here than the typical building in the City.

Mr. Charma: Unfortunately, I didn’t prepare this for everyone, but what you see here is a preliminary evaluation of where the direction of the runoff is and how we are going to manage it. We are talking about rear yard infiltration, subsurface infiltration facilities. It will be some combination of that or there maybe rain gardens. It will be all the current best management practices that the State recommends. They will be in accordance with State regulations. Along the entire driveway there will be an infiltration trench to collect that runoff, and the whole purpose of this is to collect the runoff at the source, right at the edge of the impervious surface and get it into the ground. So, you don’t have any concentrated flow.

Mr. Silverman: I went out and I looked at the site. I believe there is a fire hydrant literally at the driveway of this existing unit. I'm a little surprised that the City is requiring an additional fire hydrant to be located some 200 feet away. Usual working distance in fire service and FBA and I believe, in the Comp Plan we talked about every dwelling unit being within 600 feet of a fire hydrant. So, the applicant may want to go back and revisit with the City as to the need for a fire hydrant along Pond Road between parcels 3 and 4.

Working from the back sheet forward you have a commitment to bring in a tree expert, an arborist, to look at the existing vegetation to determine what dead woods you can cut out. If I can, I would like to have the arborist make a professional recommendation as to the impact of ground disturbance of Pond Lane on the existing trees that are in the area. I noticed, walking out in the field, clearly shown in your exhibit, the drip line of many of these trees will be highly disturbed by carving a driveway in there. In my experience, about two years after disturbance, particularly under the drip line, the tree will die. So, it is going to be somebody's responsibility either to remove the tree now and replace it with a tree that is appropriate or the homeowners' association will be dealing with an expensive tree problem about two to three years down the road. So, maybe a preemptive clearing of trees and a replanting of trees.

Moving on to the top sheet with respect to the data column, there is discrepancy between the description in the data column for Item #13 that talks about the 16 ft. wide private driveway within a 30 ft. wide private right-of-way and what is described in the purpose of the plan in Item #1 creating a 15 ft. wide private driveway. I'm assuming it is 16 feet because that is the least expensive way to put something in. 15 feet would require custom work. I believe it is just an error that was overlooked.

Moving into the general notes, there is reference to underground water and sewer. Does the City require underground electric? My preference would be that electric service be underground to this site and I didn't research the availability of natural gas to the site. Would natural gas be brought into the site for these units? So, all of those would be underground and they should be referenced.

Note #24 should be bolded. It has been my experience that the representations that are shown on these drawings will somehow become poured in concrete and then further down the line someone will argue you can only build the outline of the houses shown on this piece of paper. Particularly if the owner chooses to sell the lots to individuals or they will sell them to a developer who doesn't want to build this particular footprint but is still within the standards recommended by the City. So, that will save some problems down the road.

Getting into the meat of things. I am confused by what is shown on the drawing where there is crosshatching on Parcel #1 next to the existing house which I believe is existing driveway that says, "to be removed." How is Parcel #1 going to take access for their parking area behind the house and the use of their garage?

Mr. Charma: On the plan, it is easy to see here. What we are showing is that it is an existing asphalt driveway and what we want to do is take that additional pavement out and reduce it to 5 feet wide so now it becomes a walkway back to the house because you access the house to the rear by stairs, so that becomes a sidewalk. In the back there is already a big pad that is existing, a parking area, and entry into the garage that will take access. We will relocate the driveway to come off the new private drive.

Mr. Silverman: Okay. That is not shown on the plan and it should be indicated. There is nothing in the notes that I could find.

Mr. Charma: It should be there.

Mr. Johnson: It is on the handout, Alan.

Mr. Silverman: I was looking at the regular exhibit. So, it is under there showing the access. Let me make a note. I have a question and this is just my lack of knowledge of some of the aspects of how the City runs its land use. What are the conservation easements?

Mr. Charma: Those are existing easements that were required under the approval of Lauras Glen.

Mr. Silverman: What do they provide?

Mr. Charma: They are to act as, perhaps, a buffer or access. I would think a buffer. Normally, a conservation easement is land that is set aside and nothing will ever happen to it. You can plant in it but you are not going to develop it or do anything with it.

Mr. Silverman: I did not know whether it was a means of accessing the floodway and open space along the White Clay and it would appear that this private driveway would be a natural extension of public access, much like Pomeroy Trail only it goes down to the White Clay Creek.

Mr. Charma: I don't believe that is the intent. That was the intention of Lauras Glen because it runs around the parameter of the property around the back of this parcel. I think it was intended to be truly a buffer.

Mr. Silverman: So, the homeowners association could make it very clear that their driveway is not part of the access, the conservation easement or however it is used.

Mr. Charma: That is correct.

Mr. Silverman: That may be a useful note on the plan also. You reference monuments. I have been involved in some projects where private access has been developed as long as 15 years down the road and there were a number of issues that came up because people died, papers were lost and no one really had a clear idea of exactly what the document said. I would recommend – and this is where I am going to get into the meat of what I want to deal with here – that the Pond Lane, as shown on this plan, it appears to have its own metes and bounds enclosure. Could that be listed at Lot #5 on this plan?

Mr. Charma: It is typically listed as right-of-way and it is shown as right-of-way.

Mr. Silverman: But, it is going to be part of a homeowners association agreement.

Mr. Charma: It is part of a record plan. The document itself, the record plan, is a document that lives and breathes and is recorded in perpetuity.

Mr. Silverman: Where I am headed with this is, there should be monuments very clearly visible on there not just dates and references. So when the homeowners association hires a plowing firm, the firm knows exactly what they have to clear.

Mr. Silverman: If you would like to describe the homeowners association (inaudible).

Ms. Goodman: We can certainly talk to our client about being certain that the monuments are clear. I hear you on that. I think the issue with having this be a separate lot is something that is contemplated in the Code and I think the lot would not conform to Code requirements. So, we can't really make it a lot. You can't make it a different tax parcel, but we certainly can be sure that it is clearly marked and it is clearly described on the plan to address your concern about where exactly is it and how does it get cared for.

Mr. Silverman: Some way the homeowners Association has to know exactly what their lot is, even though it is not a legal lot.

Ms. Goodman: And, they typically do refer back to the record plan for these things and they refer to their attorney who gives them the metes and bounds for the plan and then they know, but clear monuments on it. Certainly.

Mr. Charma: That can be done very easily, one monument in the back, one where it changes direction and you have clear identification.

Mr. Silverman: But, I would like to see physical concrete monuments.

Mr. Charma: Oh, absolutely. Public Works, I would say, within the last five years has really stepped up to the plate requiring the monuments as part of the as built plan. So, when the project is completed, monuments have to be shown on that plan. They have to be installed and shown as existing.

Mr. Silverman: I would like to talk about the homeowners association itself. If I read the notes correctly on the plan, the owner of parcel #1 has excluded themselves from the homeowners association, yet the homeowners association is responsible for the driveway. I will talk about responsibility in a moment. Which means that the person who is now going to be using Pond Road, the driveway, to get into the rear of their parcel will be getting a free ride and the driveway maintained by the owners of parcels #2, #3 and #4.

Ms. Goodman: Mr. Silverman, what note are you looking at? What we are looking at is note #12.

Mr. Silverman: Note #29. The construction to maintain by the owners of lots #2, #3 and #4. The owner of parcel #1 would still maintain the driveway off of Capitol Trail. If I was an owner of the lot in back and I was paying for the snow plow and the maintenance, I would want the owner of parcel #1 to participate.

Mr. Charma: That is a good catch. Parcel #1 should be included in that. What we were trying to say there is that DelDOT is saying that they have no maintenance responsibilities with roads that are private streets.

Mr. Silverman: Add on there also City owned so it is very clear if somebody says I want to get my Councilman to get the City to pave my road. It is very clear that the City has no responsibility whatsoever. How does the owner anticipate working with the purchaser of Lot #4?

Ms. Goodman: In regards to what?

Mr. Silverman: Access. I buy lot #4 and I, with the owner of lot #1, do the two of us put in the construction road?

Mr. Charma: Typically in a situation like this, the builder will buy the lots. The builder will build the road at their cost and then the portions will be apportioned equitably as the lots are sold. It is just like, if you construct a sewer system, the first person in upstream is going to build the sewer and other than tie in downstream are going to reimburse the original person.

Mr. Silverman: How do we memorialize that on this plan for a homeowners document?

Mr. Charma: We can't memorialize it on the plan. That is a developer issue. That is a builder issue.

Mr. Silverman: I suspect, as you do, that the builder will see three lots and buy them as a three pack and move on as if it were the builder's original subdivision.

Mr. Charma: Correct.

Mr. Silverman: But, we have the circumstances where I come in and I want to buy lot #4 but I'm not going to build the street.

Ms. Goodman: If an individual were to come in and buy lot #4, that would be part of the negotiations and the contracts that they would sign with the seller and with their builder about how you are going to get access and who's going to pay for it and how, potentially, contribution might be had as Joe indicated for that road. You are really dealing with site and construction issues that are typically dealt with by private contract.

Mr. Silverman: Ms. Goodman, you are going to have to help me here. Typically, with the City of Newark, do the homeowner association agreements have to be in place before the first building permit is issued?

Ms. Goodman: I don't think that the Newark City Code speaks to that, but we can check.

Mr. Silverman: I would find that desirable so whoever is purchasing one of these lots and the owner of lot #1 are very clear as to their obligations with respect to the development.

Ms. Goodman: And, I will tell you that if it is not in place when the first lot owner takes title, you can't bind the first lot owner. So, by default some agreement will be in place when the first person takes title or it won't be and then they will all have to agree. Either way, it does get done.

Mr. Silverman: I would like this to be able to eliminate that time and dollars spent up front so the weather vane doesn't point around to, well, the City won't give me a building permit.

Ms. Goodman: So noted. If all the other Commissioners agree that they want to put that in the recommendation, we will certainly look at that in between the time that we are in front of you and we go to Council to figure out how to handle that best.

Mr. Silverman: I have a question for Maureen. Will the City not provide trash hauling because it is not a public street?

Ms. Feeney Roser: No, because it is not a public street.

Mr. Cronin: Would it be desirable for it to be a public street vs. a private drive?

Ms. Feeney Roser: No, that affects the width of the street.

Mr. Charma: Public Works is adamant. They do not to do a street with three lots.

Mr. Cronin: So, there is no sidewalk along this private drive then?

Mr. Charma: That is correct.

Mr. Bowman: We will open it up to public comment. We have quite a stack here. Again, I will reiterate. I'm going to limit public comment to 3 minutes per person with the right to limit redundancy. The first one I have is Kathy Dettwyler. If you would step to the microphone, please, and state your name and address.

Ms. Kathy Dettwyler: I am here on behalf of myself and my husband. We live at 1 Orchard Avenue. We live around the corner from the proposed development. I was very surprised at Lauras Glen turning out as well as it did. I was not happy with it when it was first proposed but it seems to have had no impact on the neighborhood. I was concerned about rainwater runoff, and I have gone over there a couple of times during major storms to see what was going on and it seems not to be a problem. I am here to support Mr. Pirestani and the subdivision of the land into four lots. I think it meets all the requirements. I think the lots and home sites will be very nice. The people who live on the adjacent lots on Capitol Trail mostly back up, after a large yard, to the backyard of the person in lot #2 so, it is not like they are going to have another house right over the (inaudible) where people can peer into their house. I am here to support Mr. Pirestani and state that it is a great development for the neighborhood and I don't see it having any impact on the neighbors in a negative way.

Mr. Stan Tucker: 309 Capitol Trail. The first thing I want to address is 3 homes have been squeezed into this really, really, really small one acre. Back here is 113 Trout Stream Drive. It is in a 100 year floodplain. It was originally in the 500 year floodplain but is now in the 100 year floodplain. Things have changed in 10 years. This home should have never been built. It couldn't be built now, but here it is and we have to deal with it. There were two opportunities not to build, at least. One was, to just build homes outside the floodplain. That didn't happen. What happened was, (inaudible) was given permission to build this home in 2005. It wasn't built until 2012. Seven years went by. It wasn't because there were not any buyers. All the other homes went quickly. This one had issues. It was a failed property. How do I know that? I went to the City's website. It only goes back to 2009, but I went to the Departmental Weekly Report. They don't go back any further than 2009. Between 2009 and 2012, either Public Works or Code Enforcement mentions Lauras Glen's

sediment and erosion issues at least 14 times. In 2012, they are finally given the green light to build this property. Before it was half finished, it was halted by the City for what they call a punch list of issues involving grading and erosion. Work started again, more problems happened. This time the grading was on the back of the property. Then it was on the front property. Finally, it was built in 2012. This is a failed property. The retaining pond overflows all the time just from rain. The owner of that property is here to speak more about that. (Inaudible) you have safeguards against flooding.

Mr. Bowman: You have about a minute left, Sir.

Mr. Tucker: Okay, no problem. This is Lauras Glen. This is that property. This the creek. The creek here is really low. It comes across and it comes straight down and right up here is the high water mark of the farthest it has come. It has flooded in Agnes, Floyd, Hugo and this property is just waiting to have a catastrophe happen, and whatever you are putting in this way is not going to save them going this way. I just want to end with one last thing and just say all this impervious ground cover you are putting in is going to effect this property and the City is going to have to buy it back one day, condemn it, and it is going to be \$500,000+ market value and then the homes along it are going to suffer an economic loss because who wants to live in a development with a condemned home that nobody can live in?

Ms. Celeste Kelly: 309 Capitol Trail, married to Stan Tucker. I just wanted to say that I have lived most of my life in Newark. Each year I see less and less undeveloped green space. I know personally what the Planning Commission is up against. Even your best recommendations may go unheeded. Last year, 28 out of 31 developments were eventually built. If you are a developer, you will have the ear of the Planning Commission, the Mayor and the City Council. If you are a resident, your voice is lost amid the sounds of the ch-ching of the new revenues . . .

Mr. Bowman: Ms. Kelly, I am going to interrupt you for a minute. Will you please address your comments to this development?

Ms. Kelly: I am, because this is zoned RS so that doesn't mean we have to give them (inaudible).

Mr. Bowman: I understand that, but please address your comments to this land issue.

Ms. Kelly: I will.

Mr. Bowman: What you are doing now is giving us a history lesson and we really don't need a history lesson. If you will please focus your attention . . .

Ms. Kelly: Is this counted as my three minutes with you talking?

Mr. Bowman: It certainly is. So, you better . . .

Ms. Kelly: Okay, better go. Ten years ago, Lauras Glen was at the same point in the planning process. The Planning Commission recommended an average density of one house per acre even though it was zoned RS. They knew the sensitivity of the area and the trouble that they would be having so they limited it to one house per acre. The Commission decided on this density because of how close the development would be to the White Clay Creek. The City Council disregarded the vote of the Planning Commission and went ahead and gave the developer an average density of two homes per acre, including two homes in the floodplain. So, were you to vote against this development tonight or limit them to a more suitable density for this small oddly shaped lot, your votes are still important. Don't be discouraged that Council may see fit to ignore your recommendation. As a citizen's commission, you have a discretion and right to say what is suitable for this area, especially after taking all factors into consideration, including sediment and runoff. You have heard already what problems have occurred so far from building so close to the floodplain. Actually, you are going to hear more about that. Now, the plans are to add more impervious cover to the sensitive area, another road, three more houses, driveways. Who will bail them out when they are flooded and the residents of Lauras Glen are flooded. It will be our City

tax dollars at \$500,000 per home. Also, these homeowners' houses will devalue with the floodplain getting closer because of erosion and added impervious cover. Safety issues like traffic are a big concern even though you got some other studies done. I just know from living on Kirkwood Hwy. the average speed is 55 to 65 miles per hour. Nobody even wants to stop at Cleveland Avenue. There were two accidents last weekend. There are accidents all the time.

Mr. Bowman: One minute.

Ms. Kelly: They don't even want to stop at the light at Cleveland Avenue. Good luck to these new residents trying to get in or out of their 30 ft. private road. I know just trying to get out of my driveway, it is very difficult. There is a homeowner in Lauras Glen with two small children and a retention pond that overflows regularly. They are in the floodplain. Who is looking out for their safety? Even though their home should have not been built, we need to look after their safety as well because their civic association doesn't even exist. In conclusion, to increase the green space in Newark, when the application for this development has concluded, the community would like to make Mr. Pirestani an offer to buy this oddly shaped lot for use as orchard and community garden. Thank you. I just had one more question. How many major subdivisions has Mr. Pirestani developed?

Mr. Bowman: I don't believe that is relevant to this issue. Thank you.

Ms. Lonisha Davis: I reside at 113 Trout Stream Drive. I would like to say that I have two small children and I have a retention pond to the north of me. It is about 10 feet from my side door, and the pond has overflowed about two times with not even large amounts of downpour. The downpour starts on the top and runs all the way down under my deck. It is really dangerous and I believe it should be a health hazard. They are not going to have any new sewer or drainage built at their property. I don't see how it should be safe for them to have the houses built there when all of the downpour comes onto my property. And, as in my settlement, I read over it, it was a 500 year floodplain and I just went over to the City of Newark and it states there that we are now in the 100 year floodplain. When I went on FEMA as I was notified, it was not listed on there at all. That is what I have to say in reference to it.

Ms. Dianne Aikens: I live at 107 Trout Stream Drive. My house backs up to it. I am concerned about the water flowing down from Capitol Trail that runs down towards my house. When it rains now, my sump pump runs for days. What happens when new houses are built in this subdivision? The water will run towards our houses in Lauras Glen. Because of the erosion of the banks of the White Clay Creek, 113 Trout Stream is now in a 100 year special flood hazard area. When the White Clay Creek floods, plus all the water running off from Capitol Trail, and this house gets condemned, the value of our homes will go down. Has an environmental impact report for this subdivision been requested? When we bought this house, we were told by the builder that the land behind the houses were landlocked and nothing could be built. Will the homes be above \$400,000? I have spoken to two real estate agents and told me that if a home was built in this subdivision that is less than the value of my home that my property value will go down. The plan is to put three houses on this odd shaped piece of land. There is no way that they could be worth over \$400,000 each. The land for the subdivision is RS zoned – single family homes. I have been told that when a project is approved in the City of Newark, it is very easy to change the zoning, for example, townhouses. There is going to be open spaces in this new subdivision is what you said. My husband and I have been cutting the grass on this property for six years. When our builder went bankrupt, all of the money that was supposed to be put in the escrow account for the Lauras Glen Civic Association was gone. So, if this happens with this new subdivision, who is going to maintain the property? I have over the last six years had to call and file complaints to the City of Newark to get the open spaces maintained in Lauras Glen. So, what is the plan to maintain the open spaces in the new subdivision? Mr. Pirestani stated in a letter he sent to me every weekend that we have been enjoying the property, the views and extending our back yards. I do not enjoy seeing weeds and I have not enjoy seeing weeds and I have been cutting the grass so I don't have snakes and rodents up close to my property. Also, he stated this is not an open space so, if he feels that it isn't, then why isn't the grass being cut now? The previous owner used to maintain the property.

So, I am not in favor of this subdivision being built for the reasons and concerns that I have stated. Thank you.

Ms. Gayle Giannette: My husband, Patrick, and I live at 114 Trout Stream Drive. We are about 10 feet from the White Clay Creek. Our house is built on high ground, however, if three homes were built on this one acre shaped lot, we do have a fear of flooding occurring onto our property. Also, we have a concern about the property value of our home. We invested a lot of money into our house and are very proud of it. If they are not equivalent to the size of our house, we definitely feel that the appraisal will be low. In summary, my husband and I do not support the development of three homes on this open space. Thank you.

Ms. Linda Lumb: I live at 205 Capitol Trail. My husband and my sister-in-law are now the owners of this large piece of land that abuts this roadway. First of all, I would like to know how much right-of-way is between their property and the road. Can anybody answer that?

Mr. Bowman: We can save that question and have the applicant respond or the City respond.

Ms. Lumb: I just wanted to address one other thing about plans and what were on the plans for Luras Glen. Trees were spoken about on this plan. When they built Luras Glen, trees were also spoken about. There were historic trees. They were told to keep the historic trees. They didn't. They came down. All of them. So, as far as the trees go, this Planning Commission has no right to tell the developer when they cannot take trees down and remove them from the lot. So, what it said on the plans doesn't necessarily happen. What I wanted to show also, is this creek right here – White Clay Creek that runs around – it is slowly eroding our land. It is eroding the shoreline here that is owned by Frank Acerno. There is no shoreline left. It is just a drop-off and this has happened over the last 15 years where it has eroded quickly. Prior to that, it was not eroding quickly like now. I just wanted to cover that with you because there is a lot of erosion on White Clay Creek. As far as our property, when Luras Glen was built, on our land because it is farmland we still have a few remaining fruit trees. The deer haven't destroyed all of those. My in-laws, Robert and Edith Lumb, used to farm that land. In fact, they owned all of this at one time in Newark. We would love to plant corn again just like they did.

Mr. Bowman: Again, I am going to ask you to stick to the facts involving this plan. We are drifting off the subject.

Ms. Lumb: The erosion from this, I would like to know what the prevention of the erosion coming off the roadways and the driveways and all of the impervious surfaces where it erodes our property is going to be. How do we keep trespassers off of our property? Can they build a fence?

Mr. Bowman: I understand your comments, but your time is up.

Ms. Elaine Read: 2 Ash Avenue. It is diagonal to where the houses are going to be built. I firmly believe that it is within the law that he should be able to use and benefit from the property that he has. It is zoned for more than three houses. So, I feel that he should be able to do that and I am in support of this subdivision.

Ms. Shirley Williams: 200 Woodlawn Avenue. I feel that this gentleman should go ahead and build the properties. It seems like people go ahead and build properties no matter what. If they have a little piece of land and they want to build, somehow they get to build whether you like it or not.

Ms. Rebecca Read: 2 Ash Avenue. I am in support of Mr. Pirestani. I feel like putting three homes there will have no negative affect on any of the neighborhoods. And, I feel like he should be able to benefit off of his land. He owns that land, he should be able to do what he wants to do with that land, if the law says he can. I feel like the people who are going to be building there are going to know that there is a creek right there. So, if they don't like the fact that there is a creek right there, they aren't going to build there. So, they are going to know if it is there or not. I am in support of the development.

Ms. Michele McCandless: 314 Capitol Trail. I understand that this land is zoned for more houses than Mr. Pirestani is proposing. I know Mr. Pirestani. He has reached out to the neighborhood. I support his property rights as long as it is within the right of use. Clearly, this plan does meet right of use and is well within the law. I am in support of Mr. Pirestani's project.

Mr. John Mayer: If anybody in this room should be against the project, it could be me. Right now on part of a property I used to own we are building 5 homes there. Three of them are built and already sold. The other two will soon be built. That is on Woodlawn and Elm. Mr. Pirestani has every right in the world to do what he is going to do. It is well within the law. I don't mean to be disrespectful to Linda Lumb, but the area I live in is called Lumbrook. I live in an old 1796 farmhouse that her grandfather used to live in. They used to own it all. All that land has been sold off over the years and she talked about the land that her grandparents owned and I knew them also and they sold the land off.

Mr. Bowman: I understand, Mr. Mayer, but let's keep away from the history. We are focusing on this development.

Mr. Mayer: The bottom line is, they sold the land off because they had the right to develop it – the same land basically. Mr. Pirestani should have the right to develop it and I am 100% for it.

Ms. Kathy Melcher: I am here on behalf of one of the neighbors, Russell Wagner, at 313 Capitol Trail. He is at home and he is connected to oxygen and couldn't make it. He has written a letter and asked me to read it on his behalf. His property backs up directly to the proposed subdivision.

“Dear Planning Board and Council members, I would have personally come to the Planning Board meeting but I am physically not able to. Mr. Pirestani came to my door about two months ago asking me for non-objection to break up his 1.03 acre lot and bordering mine and behind me into three lots. I thought this was strange and asked him, isn't it your property? He said yes. I said are you doing something illegal? He said no, I am working with the City and what we want to do is within the zoning guidelines. I told him, then go do it. You don't need my non-objection. Dear Planning Commission and Council Members, I strongly support Mr. Pirestani's minor subdivision. Thanks you for all your good work and for our community and God bless, Russell Wagner, 313 Capitol Trail.

Mr. Lawler: I am in support of the project that they want to build – the three houses. I live right next door to the property. The property is going to be back from me, past my property, but alongside of the Lumb property. I think it is going to be a nice development. I have been approached about it and I agree with it. I support him on this.

Mr. Michael Sangemino: 7 Elm Avenue. Across the street from me was undeveloped property. It was originally owned, I think, by Kirk's Florist. It was very nice and I liked the woods. Mr. Pirestani came up to me and said what do you think of this when they were developing it. I said I really don't like it and I kind of missed the trees and deer, but it is their land and they can do what they want to do with it. If I really wanted to keep it, I could purchase the land or I could move someplace else. As long as this major subdivision is within the Code and they are taking steps to make it (inaudible). Obviously, it is going to have to follow DNREC in regards to runoff. So, I really see no reason why this project can't and should not go through.

Ms. Alberina Ziemba: 111 Trout Stream Drive. I do support this project. I have never had any problems with any flooding. I have been there since the time that they built the house and I have never had any problems with traffic getting in and out of the development. So, I do support it.

Mr. Wilson Khaemba: 105 Orchard Avenue. We do support Mr. Pirestani's efforts to divide up his land. He should have the right since he owns the property. I come from Kenya and have been here for many years. I love the fact that there is due process to do this. I also like the fact that there are laws in this country that protect your right to do whatever

you want with the property as long as you are not breaking anybody's law.

Ms. Nirali Petel: 109 Trout Stream Drive. I want to express my opposition to this proposal due to the inevitable possibility of flooding and erosion, property maintenance issues and the impact on property value. I also received a letter from Mr. Pirestani that we have been enjoying our property. Yes, because we do own that property so we have a right to enjoy our homes as homeowners, not profiteers for selling a parcel of land.

Mr. Jerry Clifton: 1000 Fountainview Circle. In my 17 years on Council I have never known anyone that has reached out to the extent that Mr. Pirestani has reached out trying to work with the community to make this development possible. I think there has been a lot of back and forth on some of the issues, but the facts in my mind remain that just as Council and just as Planning Commission we are ruled by the law that is existing at the time that the project comes forward for consideration. The biggest issue to me is that the Comprehensive Development Plan allows this. If anybody remembers back a few years ago, the Comp Land Use Plan was changed. It stayed level and actually it was made tougher than it had been in the past. Things are actually a little tougher today with the Comp Land Use Plan. But, the fact is, it is a by-right project. It isn't a by-right project where the developer is taking full extent of those rights because, as it was mentioned by Planning Commission earlier he is right in the middle of the allowable parameters. That is a good thing. I think it is a good thing for the size of the houses that are going to be built. And, by-the-way, something that is near and dear to my heart – and I think I am correct in this because I know I'll be corrected here quickly if I'm not – these houses are going to be built with the latest safety accommodations, including sprinklers. These are going to be houses that are not just going to be a beautiful houses and a compliment to the neighborhood, but these are going to be houses that are going to be safer than, maybe, some of the surrounding houses. The fact is, that zoning is there to let me as a homeowner or purchaser of the property to know what the parameters are and know what I can do and know what I can't do. I think this is a reasonable request I think this is a good compliment to it the development that is already there. I think the houses are going to appeal to a market that is looking to move close to the downtown area and will bring a different dynamic and family back to the City of Newark.

Mr. Bowman: Anyone else? If not, we will bring it back to the Commission for their consideration or any questions they may have.

Mr. Hegedus: I have one further question. I am not sure whether this is better to go to Maureen or the applicant. Part of this discussion this evening has been around this issue of where the floodplain is. You gave us this picture that shows where the 100 year and 500 year floodplains are, and then we got this document about the 113 Trout Stream Drive that says it is in the special flood hazard area – 100 year. There seems to be a discrepancy. If you draw the line to go smoothly over to 113, it would seem that the lines are off as compared to what the computer printout says. I am wondering how we resolve that.

Ms. Feeney Roser: The 113 Trout Stream Drive is an odd shaped lot and it actually goes to the north and crosses into both the 500 and 100 year floodplain, but it is not where the house is.

Mr. Hegedus: It is sort of a triangular lot similar to what is shown in this picture. The point of it crosses in, is what you are saying, Mr. Charma.

Ms. Feeney Roser: That is actually part of that lot.

Mr. Charma: May I address the question? What you see is 113, as Ms. Feeney Roser has described, it is a triangular point and the 500 year floodplain is from the back corner of the point of the triangle. It is 95 feet up onto that corner. The 100 year floodplain is 45 feet upon that corner. Because it touches the lot, the Zoning Code is going to say it is impacted, but elevation wise, it is not getting up to this house. The lowest contour right here at this last lot is 12 ft. higher than this. So, you better get Noah's Ark out if that occurs because there are a lot places in Newark that are going to be in a lot worse shape than that area right there. The reason it is listed as a flood hazard is because it does come on the lot. If it came on the lot one foot, it would have to be listed as a flood hazard, but the map that you have is the FEMA map. That was part of the stormwater assessment study that is required by the

new Stormwater Regulations. And, by-the-way, they are probably the most stringent regulations that have been enacted in many, many years by the State. There has been a lot of discussion about runoff and erosion, the new regulations have been enacted to, hopefully, fix these things. Everything is not perfect. It is not a perfect world, but they are pretty strict and we have to abide by them. If we have to recharge, we are going to recharge.

Mr. Hegedus: Can I follow up with one more question? If I understand the contour is right and I could not, it not only slopes from Capitol Trail towards White Clay but it also slopes from Cleveland down towards the Lauras Glen. Is that correct? It is going both ways?

Mr. Charma: Yes. The existing contours bring the flow kind of diagonally across the property toward this back corner. This is under the definition of stormwater. Our point of analysis that is required by the City and by the State is right here because they know that is where the water goes now. That is where the runoff goes. So, when we submit construction drawings and further computations later, we have to demonstrate that. We have not impacted the point of analysis in a negative fashion post development.

Mr. Hegedus: The picture you showed me here had some recharge areas in between the sketch of the houses there and the houses that are in Lauras Glen. Correct?

Mr. Charma: They were in the rear yards. They were in the properties of the development.

Mr. Hegedus: But, you wouldn't expect from the contours that those recharge areas, that even if it recharged their water, would flow towards Lauras Glen. You would think it would flow down towards . . .

Mr. Charma: Surface water, as well as, ground water flows perpendicular to the (inaudible). The contours are marching down like this, the flow is going to be generally perpendicular to that.

Mr. Silverman: What elevation is the 100 and 500 flood elevation at?

Mr. Charma: I have to approximate that.

Mr. Silverman: Approximately.

Mr. Charma: I am looking at our topography and it should jive with the FEMA data. It should all be the same data. The 500 year flood elevation right here is probably about elevation 59.

Mr. Silverman: And the elevation of the closest lot is?

Mr. Charma: The contour that runs along that property line is 69 – 10 to 12 feet higher.

Mr. Silverman: So, there is 10 to 12 feet difference from where the flood line is and where the first property is.

Mr. Charma: Correct.

Mr. Silverman: Help me on this. There is not a prohibition on building in the 100 year floodplain. It is just that the living elevation of the house has to be taken into account, or is that the 500 year floodplain?

Mr. Charma: That is correct. The City Code really does prohibit that unless you are replacing an existing structure or if you flood proof it as well as, FEMA allows certain types of development as long as it is flood proof.

Mr. Silverman: But, you don't have to take any of that into account because you are at least 10 feet away.

Mr. Charma: Absolutely.

Mr. Silverman: Then also, that the FEMA flood maps are more of a red flag and a reference and it is the engineer and the engineering firms that determine where that hard and fast line is as you have done here.

Mr. Charma: That is correct. A stormwater assessment study that is required, a detailed study that looks at soils, ground water, and a host of variables that impact the property, just for that reason, to look for red flags and none of those apply.

Mr. Silverman: I know it is not within the scope of your contract, but we had a speaker talk about drainage across their property tonight and she was concerned about drainage in the subdivision coming across her property and I believe there are not street numbers in Lauras Glen but it is listed as Reginald Jones. How will the development affect her property? Will it take the water generally away from it now?

Mr. Charma: By Riparian Law, the water can go where it goes under existing conditions. It does flow across that property under existing conditions.

Mr. Silverman: That is the very back, back part?

Mr. Charma: At that back point, yes.

Mr. Silverman: But, not near her home.

Mr. Charma: It does not flow near her home. I don't know why she is getting runoff or if she is getting runoff. I don't know whether her lot hasn't been graded properly.

Mr. Silverman: So, it could be just an issue with her particular lot.

Mr. Charma: Not seeing that, I don't know.

Mr. Bowman: Are there any other questions from member of the Commission?

Ms. Goodman: Mr. Chair, if I might, now that the public has had its say, we do have some letters of support, 23 letters of support and 50 letters of non-objection. I would just like to add them for the record. [Secretary's Note: The letters of support and non-objection are in the Planning and Development Department and are available for review].

Mr. Bowman: They are entered into the record. Hand them to the Secretary. We are back to the members of the Commission and back to the table for a recommendation.

Mr. Cronin: One question, if I may. We mentioned a homeowners association. Is that a real likelihood in a development of three new homes and one existing home? And, I presume it is not a requirement. It is not too practical to have an association with such a small number of folks.

Ms. Feeney Roser: I believe it is because of the private drive. You need some kind of agreement on sharing the cost of maintaining it.

Mr. Silverman: Private water system and private sewer system.

Mr. Cronin: So, this will not have public sewer or public water?

Mr. Silverman: According to the notes for the contents of the report.

Ms. Feeney Roser: They are getting City water and sewer.

Mr. Silverman: The City is putting in the water system? I must have misread the notes, then.

Mr. Charma: The developer will install water and sewer. It is tying into City systems – City water, City public sewer.

Mr. Silverman: How about the sewer system.

Mr. Charma: The same thing. It will tie into the City system.

Mr. Silverman: I didn't think the City took over enforcement.

Mr. Charma: They are not going to. That will be private but it is tied into the City system.

Mr. Silverman: So, the homeowners association will also be responsible for enforcement.

Mr. Charma: That is correct.

Mr. Cronin: Alright, you want an association for securing valid functions and they will have to step up to the plate and do it.

Mr. Bowman: Back to the table.

MOTION BY HEGEDUS, SECONDED BY JOHNSON THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL APPROVE THE 305 CAPITOL TRAIL MAJOR SUBDIVISION, AS SHOWN ON THE LANDMARK SCIENCE AND ENGINEERING PLAN, DATED MARCH 12, 2014, WITH REVISIONS THROUGH MAY 5, 2014, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS.

Mr. Bowman: We have a motion and a second. Are there any other questions to clarify the motion from the members of the Commission?

Mr. Silverman: Do you concur that we not have a sidewalk offset for the frontage on one property along Capitol Trail. That is one of the recommendations of the Public Works Department. Do you want to make that as an exception? It doesn't seem to make sense.

Mr. Johnson: You should amend it before it is voted on.

Mr. Bowman: This is just adding the comment about not changing the sidewalk.

Ms. Feeney Roser: It would be excluding the sidewalk comment of the Public Works Department in the Subdivision Advisory Committee conditions.

Mr. Silverman: And also revisiting why you need another fire hydrant within eyesight.

Ms. Feeney Roser: I don't think that is appropriate for this Board to add. I think if there is not a requirement, the engineer and the City Fire Marshal can work that out.

Mr. Silverman: Okay, because I suggest that they sit down and they do that. And, I will leave the sidewalk offset as the amendment.

MOTION AMENDMENT BY SILVERMAN, SECONDED BY BOWMAN THAT THE PUBLIC WORKS DEPARTMENT COMMENT ABOUT OFFSETTING THE SIDEWALK ON CAPITAL TRAIL BE EXCLUDED.

VOTE: 5-0

AYE: BOWMAN, CRONIN, JOHNSON, HEGEDUS, SILVERMAN

NAY: NONE

ABSENT: BRILL

MOTION AMENDMENT PASSED

Mr. Bowman: We are back to the main motion as amended.

MOTION BY HEGEDUS, SECONDED BY JOHNSON THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL APPROVE THE 305 CAPITOL TRAIL MAJOR SUBDIVISION, AS SHOWN ON THE LANDMARK SCIENCE AND ENGINEERING PLAN, DATED MARCH 12, 2014, WITH REVISIONS THROUGH

MAY 5, 2014, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS, EXCLUDING THE PUBLIC WORKS COMMENT WHICH STATES THAT THE SIDEWALK ALONG CAPITOL TRAIL MUST BE PULLED BACK TO PROVIDE A 4' GRASS STRIP BETWEEN THE BACK OF THE CURB AND THE SIDEWALK.

VOTE: 5-0
AYE: BOWMAN, CRONIN, JOHNSON, HEGEDUS, SILVERMAN
NAY: NONE
ABSENT: BRILL

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission adjourned at 8:30 p.m.

Respectfully Submitted,

Elizabeth Dowell
Planning Commission Secretary